



John Elias Baldacci
Governor

Maine Department of Health and Human Services

Office of Administrative Hearings
Marquardt Building
11 State House Station
Augusta, ME 04333-0011

Brenda M. Harvey
Acting Commissioner

James D. Bivins
Director

TO: Brenda M. Harvey, Acting Commissioner
Department of Health and Human Services
221 State Street
11 State House Station
Augusta, ME 04333

DATE MAILED: 4/19/06

In Re: Pine Tree Society—Appeal of notice of overpayment and denial of Pine Tree Society's request to offset its net operating losses of 2000 and 2001 against the overpayment

RECOMMENDED DECISION

An administrative hearing was held on December 15, 2005, at Augusta, Maine in the case of Pine Tree Society before Hearing Officer Michael L. LeBlanc. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services. The hearing record was left open until December 30, 2005, to receive closing arguments from the parties, which were received and marked as Exhibits HO-5 and HO-6.

CASE BACKGROUND AND ISSUE:

On or about June 24, 2005, the Department of Health and Human Services, Division of Audit (the "Department") notified Pine Tree Society for Handicapped children & Adults, Inc, ("Pine Tree") that it intended to recoup MaineCare overpayments of \$86,093.00 for Pine Tree's fiscal year ending August 31, 2002 ("FY02"), and \$61,406.00 for Pine Tree's fiscal year ending August 31, 2003 ("FY03"). On or about June 28, 2005, Pine Tree requested an informal review asking that the Department offset Pine Tree's losses totaling \$179,997.00 during its fiscal years ending August 31, 2000 ("FY'00") and August 31, 2001 ("FY01") by the overpayments for FY02 and FY03. On or about August 16, 2005, the Department denied Pine Tree's request. On or about August 26, 2005, Pine Tree filed a request for an administrative hearing. Pursuant to an Order of Reference dated October 18, 2005, this matter was assigned by James D. Bivins, Esq., Chief Administrative Hearing Officer to the undersigned Hearing Officer to conduct an administrative hearing and to submit to the Commissioner written findings of fact and recommendations on the following issues:

- (1) *Was the Department correct when it determined that audits for fiscal years ending 8/31/02 and 8/31/03 resulted in overpayments to Pine Tree Society in the amount of \$147,499?*
- (2) *Was the Department correct when it denied Pine Tree Society's request to offset its net operating loss in 2000 and 2001 of \$175,597 against the overpayment?*

Our vision is Maine people enjoying safe, healthy and productive lives.

All parties agree that the second issue should be amended to read:

- (2) Was the Department correct when it denied Pine Tree Society's request to offset its net operating loss in 2000 and 2001 of \$179,597 against the overpayment?

APPEARING ON BEHALF OF APPELLANT:

Anne Marsh, Executive Director
Kim Munro, Director of Day Hab Program
Jane Perry, Comptroller

APPEARING ON BEHALF OF AGENCY:

Jane Gregory, AAG
Herb F. Downs, Director of Audit

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Notice of Hearing dated 10/19/05
- HO-2. Order of Reference dated 10/18/05
- HO-3. Hearing Report dated 10/11/05
- HO-4. Acknowledgement, dated 9/7/05, of Request for hearing
- HO-5. Closing arguments from Pine Tree
- HO-6. Closing arguments from the Department

Department Exhibits:

- D-1. MaineCare Benefits Manual, Chapter III, Section 24
- D-2. Cost Report for FY00
- D-3. Cost Report for FY01
- D-4. Cost Report for FY02
- D-5. Cost Report for FY03
- D-6. Audit Report Transmittal for FY01
- D-7. Audit Report Transmittal for FY00
- D-8. Audit Report Transmittal for FY02
- D-9. Audit Report Transmittal for FY03
- D-10. Request for Informal Review dated 6/28/05
- D-11. Final Informal Review Decision dated 8/16/05
- D-12. Request for hearing dated 8/26/05

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given timely and adequately. The Pine Tree made timely appeal.
2. Pine Tree was a MaineCare¹ provider of day habilitation ("day hab") services for its fiscal years 2000, 2001, 2002, and 2003.

¹ MaineCare is the State of Maine's version of the Federal Medicaid program.

3. The Department pays MaineCare providers of day hab services with prospective payments. At the end of each fiscal year, the provider is required to submit a cost report to the Department. The Department then audits and reconciles the cost report, which results in a finding that the prospective MaineCare was either equal, higher, or lower than the correct MaineCare payment based on the Principles of Reimbursement for Day Habilitation Services for Persons with Mental Retardation.²
4. On or about August 22, 2003, Pine Tree filed its cost reports with the Department for its fiscal years ending August 31, 2000, August 31, 2001, and August 31, 2002.
5. On or about October 29, 2003, Pine Tree filed its cost report with the Department for its fiscal year ending August 31, 2003.
6. On or about June 24, 2005, the Department issued its audit report transmittals to Pine Tree for its fiscal years ending August 31, 2000 through August 31, 2002, showing the following results:
 - a. A MaineCare underpayment in the amount of \$1,280.00 for fiscal year ending August 31, 2000.
 - b. Neither underpayment nor overpayment for fiscal year ending August 31, 2001.
 - c. A MaineCare overpayment in the amount of \$86,093.00 for fiscal year ending August 31, 2002.
 - d. A MaineCare overpayment in the amount of \$61,406.00 for fiscal year ending August 31, 2003.
7. The Department has paid the \$1,280.00 underpayment, and demanded repayment of the combined \$147,499.00 overpayment.
8. Pine Tree does not dispute that it was overpaid \$147,499.00 in MaineCare payments for its fiscal years ending August 31, 2002, and August 31, 2003.
9. For its fiscal years ending August 21, 2000, and August 31, 2001, Pine Tree had combined net operating losses in the amount of \$179,597.00. This is not disputed.

RECOMMENDED DECISION:

The Department **was correct** when it determined that audits for fiscal years ending 8/31/02 and 8/31/03 resulted in overpayments to Pine Tree Society in the amount of \$147,499.

The Department **was correct** when it denied Pine Tree Society's request to offset its net operating loss in 2000 and 2001 of \$179,597 against the overpayment.

REASON FOR RECOMMENDATION:

There is no dispute about the \$147,499.00 MaineCare overpayment. Therefore, the Commissioner should affirm it.

Pine Tree argues that it should be able to deduct the overpayment from its net operating losses for its first two (2) fiscal years. The Department argues that it cannot do so because there is no provision in policy for such an offset. The Department is correct that there is no such policy

² MaineCare Benefits Manual, Chapter III, Section 24, formerly called Maine Medical Assistance Manual, Chapter III, Section 24.

provision, which Pine Tree doesn't dispute. However, Pine Tree urges that the Commissioner consider its argument for the following reasons:

The MaineCare rate of reimbursement is based on a presumption that Pine Tree will provide day hab services to twenty (20) clients per day for two hundred and ten days (210) each. These presumptions resulted in a per diem rate of \$89.24. However, at least during its first two (2) years of operation, Pine Tree did not receive sufficient referrals from the Bureau of Mental Retardation to reach the presumptive level of participation. It therefore operated at a loss. Pine Tree could have applied for a revision of the per diem rate, but argues that it was never so informed. Pine Tree further argues that it did not know it had to file annual cost reports with the Department until the Department belatedly informed Pine Tree that it was behind on its cost report filings. Pine Tree argues that if the Department had informed it in a timely manner about its obligation to file cost reports, it would have realized it needed to request a per diem rate change.

It is recommended that the Commissioner find the above arguments unpersuasive. Pine Tree was bound by the MaineCare Principles of Reimbursement as a condition of its agreement to become a MaineCare provider. It cannot now credibly plead ignorance of that policy.

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN TWENTY (20) CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION. A REASONABLE EXTENSION OF TIME TO FILE EXCEPTIONS AND RESPONSES MAY BE GRANTED BY THE CHIEF ADMINISTRATIVE HEARING OFFICER FOR GOOD CAUSE SHOWN OR IF ALL PARTIES ARE IN AGREEMENT. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. COPIES OF WRITTEN RESPONSES AND EXCEPTIONS MUST BE PROVIDED TO ALL PARTIES. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

Dated: April 11, 2006

Signed: _____

Michael L. LeBlanc
Administrative Hearing Officer
Office of Administrative Hearings

cc: Pine Tree Society, Anne Marsh, Executive Director, P O Box 518, Bath, ME 04530
Jane Gregory, AAG, Office of the Attorney General
Herbert F. Downs, Director of Audit